

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:06cr17-1

UNITED STATES OF AMERICA,)

)

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vs.

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PHILLIP ALLEN DOSTER.)

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ORDER

THIS MATTER is before the Court on a letter from the Defendant which has been filed as a motion [Doc. 33].

In the letter, the Defendant discloses that he is currently in the custody of the North Carolina Department of Corrections (DOC). [Id.]. He asks that a federal detainer which has been lodged with the DOC be removed so that he may enjoy greater privileges within the state system. [Id.].

The Defendant was convicted in this Court on May 3, 2007 of being a felon in possession of a firearm. After the completion of his sentence, he began a period of supervised release. [Doc. 32]. In February 2011, he was arrested by the Rutherford County Sheriff's Office and charged with first degree rape involving a minor. [Id.]. It is unclear whether that charge has

been resolved but the Defendant does remain in state custody.

Because of this new charge, on March 21, 2011, a Petition to Revoke Supervised Release was filed in this Court. [Id.]. Since the Defendant was in state custody at that time, the warrant issued by this Court has been lodged as a detainer. The Petition to revoke his supervised release has not yet been adjudicated. The Defendant apparently seeks removal of the detainer so that his privileges within DOC will not be impaired.

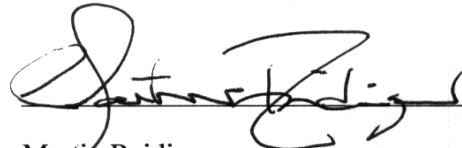
A detainer ... is an internal administrative mechanism to assure that an inmate subject to an unexpired term of confinement will not be released from custody until the jurisdiction asserting a ... violation has had an opportunity to act ... by taking the inmate into custody or by making a ... revocation determination. When two autonomous jurisdictions are involved, as for example when a federal detainer is placed against an inmate of a state institution, a detainer is a matter of comity.

Moody v. Daggett, 429 U.S. 78, 89, 97 S.Ct. 274, 50 L.Ed.2d 236 (1976).

The Defendant “is not entitled to a revocation hearing until after he is taken into federal custody” on the Petition to Revoke Supervised Release. United States v. Gomez-Diaz, 415 F. App’x. 890 (10th Cir. 2011) (citations omitted). This Court therefore will not interfere with the detainer.

IT IS, THEREFORE, ORDERED that letter from the Defendant which has been filed as a motion [Doc. 33] is hereby **DENIED**.

Signed: August 2, 2012


Martin Reidinger
United States District Judge

